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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,276	12/13/2000	Thomas J. Kolze	36898/LTR/B600	7915

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EXAMINER

DUONG, FRANK

ART UNIT	PAPER NUMBER
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2666

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Non-Compliant
Amendment (37 CFR 1.121)**

Application No.

09/737,276

Examiner

Frank Duong

Applicant(s)

KOLZE, THOMAS J.

Art Unit


2666

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 07 March 2005 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____.
- ☐ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☐ C. Other _____.
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
 - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: see Office Action.


FRANK DUONG
PRIMARY EXAMINER

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/officeflyer.pdf>.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted within the time period set forth in the final Office action.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

- Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or
- Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

DETAILED ACTION

1. This Office Action is a response to the amendment dated 03/07/05. Original claims 1-17 were cancelled and newly added claims 18-32 were presented for prosecution on the merits. However, the amendment is deemed to be non-responsive for the following rationales.

2. Newly submitted claims 18-32 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Cancelled claims 1-17, drawn to assignment of variable bandwidth or time period for transmission or reception, classified in class b37, subclass 368.
- II. Newly added claims 18-32, drawn to subscriber carrier, classified in class 370, subclass 485.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as *"concurrently storing at the CM a first set of parameters ... on a second carrier"*. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 18-32 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

3. Thus, the amendment filed 03/07/05 causes claims 1-17 to be cancelled. Therefore, it is deemed to be non-responsive.

Conclusion


4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Duong whose telephone number is 571-272-3164. The examiner can normally be reached on 7:00AM-3:30PM, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema S. Rao can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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FRANK DUONG
PRIMARY EXAMINER

June 12, 2005